IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No. 1711 of 2001
(Old No. 1520 of 2000)

Kewal Krishan Gulati
S/o Kharaiti Lal
Ex Assistant Manager
Indian Overseas Bank
Chakrata Road Branch, Dehradun presently
R/o House No. 21
Mohalla No. 16 Jalandhar Cantt. ... Appellant

Vs.

C.B.I., S.P.E., Dehradun ... Respondent

Smt. Mamta Bisht, learned Amicus curiae, for the appellant
Sri Shobhit Saharia, holding brief of Sri U.K. Uniyal, learned Senior Advocate for the respondent

Hon'ble B.C. Kandpal, J.

This criminal appeal has been preferred against the judgment and order dated 05.06.2000, passed by Special Judge, Anti Corruption, U.P. (East), Dehradun in C.B.I. Case No. 8/1994 C.B.I. Vs. K.K. Gulati under sections 201, 420, 468, 471, 477-A I.P.C. and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, whereby the accused/appellant was convicted and sentenced to four months rigorous imprisonment and a fine of Rs. 50/- under Section 420 I.P.C.; four months rigorous imprisonment and a fine of Rs. 50/- under Section 201 I.P.C.; six months rigorous imprisonment and a fine of Rs. 50/- under Section 468 I.P.C.; four months rigorous imprisonment and a fine of Rs. 50/- under Section 471 I.P.C. and six months rigorous imprisonment under Section 477-A I.P.C. He was also sentenced to one year's rigorous imprisonment and fine of Rs. 100/- under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. In default of payment of fine, to undergo for further period of one month's rigorous imprisonment. All the sentences were to run concurrently.

2. Briefly stated the prosecution case is that during the year 1990-91 the accused/appellant while working as Assistant Manager, in the Indian Overseas Bank Chakrata Road, Dehradun cheated the aforesaid Bank to the tune of Rs. 1,39,000/- by passing fictitious vouchers, making false entries in Bank records and obtaining the payments thereof. It was also alleged that during the relevant period, the accused was the scroll Officer and was also the voucher releasing officer as well as balancing the tallying officer of Ledger No. 59 of the Savings Bank Account. Sri Pushkar Nath Bhatt was maintaining his S.B. account No. 12796 in the aforesaid bank and Narendra Bhola was the account holder of Saving Bank Account No. 12799 in the said Bank and the concerned ledger for both the said accounts was 59. It is also alleged that the accused dishonestly and fraudulently made the entries of 18 withdrawal vouchers in the Officers' Scroll pertaining to both the aforesaid accounts. After making the entries of the above fictitious withdrawals in the Officers' Scroll, the accused sen the fake vouchers to the Cashier for payment, but obtained the payment himself from the Cahier against the said vouchers. The accused deliberately obtained the said fictitious vouchers from the Cashier and made the entries in the supplementary and also altered the total for balances in the supplementary so as to tally the supplementary with the Day Book.

3. According to the prosecution on 20.04.1991 the accused obtained the payment of Rs. 5,000/- against the false vouchers from the Cashier pertaining to withdrawal from S.B. A./c No. 12799 and also took the paid vouchers from the Cashier. On learning that the matter has been detected by the Branch Manager, the accused returned the amount to the Cashier and cut the entry in his Officer's Scroll, and the entry

in the Cashier's Scroll was struck-off. Therefore, the accused in such a manner by adopting corrupt and illegal means and abusing his official position as public servant, caused pecuniary advantage to himself to the extent of Rs. 1,39,000/- with corresponding loss to the Indian Overseas Bank, Dehradun, on the basis of fake and bogus cheques/withdrawal slips and fake entries to the documents and also by tampering with the documents.

4. A case under Sections 420, 467, 468, 471, 477-A I.P.C. and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 was registered against the accused on 30.08.1991 at 11:00 by C.B.I. Branch Dehradun. Investigation in the matter was conducted by Sri Raj Veer Singh – Inspector, S.P.E., C.B.I. Dehradun. After investigation, the Investigation Officer found adequate evidence against the accused and accordingly submitted charge sheet against him.

5. The learned Special Judge, Anti Corruption U.P. (East), Dehradun framed charge against the accused under Sections 420, 468, 471, 477-A, 201 I.P.C. and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The accused denied the charge and claimed his trial.

6. The prosecution in order to prove its case examined Ashok Kumar, P.W.1, Shyam Singh Rawat – P.W.2, Jagat Singh – P.W.3, V. Thirumalai – P.W. 4 and Gurinder Singh – P.W. 5.

7. P.W.1 – Ashok Kumar Bhatia at the relevant period was posted in the Indian Overseas Bank, Chakrata Road, Dehradun in subordination of the accused and who was

posted there as Scroll and Voucher Releasing Officer. He has stated that he used to do the posting in the supplementary between 03:00 p.m. to 04:00 p.m. in the evening. On 14.01.1991 supplementary (Ext. Ka .1) pertaining to Account No. 12799 was prepared by him in his own hand writing except the entry of Rs. 6,000/- which was made by the accused after he left the office. He confirmed that the endorsement (Ext. Ka. 2) theron is in the handwriting of the accused. Some cuttings were also made in the case and debit column of the supplementary and accused had altered the amount of Rs. 2,47,015/- written by this witnesses to Rs. 2,53,015/-. This cutting/alteration also bears the initials of the accused. Likewise the accused altered the original figure of Rs. 2,68,821/- of the grand total to Rs. 2,75,221/- and also rectified the mistake of Rs. 400/- which was committed by this witness. In addition, the amount of Rs. 6000/- was credited in the A/C. No. 12799 and confirmed that it does no bear any debit entry of Rs. 6000/-. He clarified that had there been any transaction, he would have definitely made this entry in the relevant ledger.

8. P.W.2 – Shyam Singh Rawat was posted as Cashier-cum-Clerk in Chakrata Road Branch of Indian Overseas Bank, Dehradun. He deposed that accused had produced before him the debit voucher of Rs. 6000/-, Rs. 7000/- and Rs. 5,000/- on 14.01.1991, 30.01.1991 and 19.01.1991 respectively pertaining to Account No. 12799 and had received the case payments of all these vouchers by misrepresenting this witness that they belonged to his landlord. After accepting the payments, the vouchers were taken back by the accused under the pretext of making posting in the respective supplementary. This witness has deposed that all these

entries were made by him in the relevant cashier scroll on the said dates.

9. P.W. 3 – Jagjit Kumar was posted as Daftari in the Indian Overseas Bank, Cannaught Place Branch during 1979 to 1984. His duty was to seal and preserve the vouchers and the filing of the correspondent of the Branch. He disclosed that on 20.04.1991, he was directed by K. Sethi, the then Branch Manager to produce the vouchers dated 12.12.1990, 03.01.1991, 19.01.1991, 14.01.1991, 23.01.1991, 30.01.1991, 31.01.1991, 09.02.1991, 13.02.1991, 23.02.1991, 05.03.1991, 07.03.1991, 13.03.1991, 19.02.1991, 22.03.1991, 26.03.1991, 04.04.1991, 11.04.1991, 15.04.1991 and 19.04.1991 but none of the vouchers of the said dates were available in the bundles preserved by him in Almirah. He deposed that these vouchers were not furnished to him for preserving/sealing.

10. Gurvinder Singh – P.W. 4 was engaged in the Lottery Business since 1988 to 1994-95. He stated that like a Hawker, he used to sell the lotteries on mobile Theli, Opposite Parade Ground, Dehradun. He has stated that the accused used to invest Rs. 200/- to Rs. 3000/- for buying the lottery tickets twice or thrice in a week.

11. Sri V. Thirumalai P.W. 5 was posed as D.G.M. in the Head Office/Central Office, Indian Overseas Bank during June 1993. He had accorded sanction for the prosecution of the accused who was posed as Officer in Connaught Place Branch of the said Bank at Dehradun.

12. During the course of recording the prosecution evidence, the genuineness of the documents being relied upon

by the prosecution were admitted by the accused and he made endorsement to this effect on the document.

13. The accused in his statement under Section 313 Cr.P.C. has admitted his guilt and stated that he had withdrawn a total sum of Rs. 1,39,000/- from the account Nos. 12796 and 12799 on the basis of forged vouchers. He also delivered the written confessional note to the Branch Manager to this effect.

14. The Trial Judge, on appreciation of evidence on record and the confessional statement of the accused sentenced him four months rigorous imprisonment and a fine of Rs. 50/- under Section 420 I.P.C.; four months rigorous imprisonment and a fine of Rs. 50/- under Section 201 I.P.C.; six month rigorous imprisonment and a fine of Rs. 50/- under Section 468 I.P.C.; four months rigorous imprisonment and a fine of Rs. 50/- under Section 471 I.P.C. and six months rigorous imprisonment under Section 477-A I.P.C. He was also sentenced to one year's rigorous imprisonment and fine of Rs. 100/- under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. In default of payment of fine, to undergo for further period of one month's rigorous imprisonment. All the sentences were to run concurrently.

15. Feeling aggrieved the accused/appellant has filed this appeal.

16. I have heard the learned Amicus Curiae, learned counsel for the respondent and perused the record.

17. The record shows that the accused/appellant was posted as Officer/Voucher Releasing Officer in the Indian

Overseas Bank during the year 1990-91 at Dehradun. He admitted that during the relevant period when the disputed withdrawals were made, his duty was on seat No. 3 where the ledger of Accounts No. 12796 and 12799 were maintained. It is a clear confession on the part of the accused/appellant that the amount of Rs. 5000/-, Rs. 6000/- and Rs. 7000/- was dishoneslty withdrawn by him from Account No. 12799 on 19.01.1991, 14.01.1991 and 30.01.1991 respectively , on the basis of forged vouchers and the entries of these withdrawal were not made in the ledger nor it was brought to the knowledge of account holder. It is also an admission on the part of the accused/appellant that the forged entries of these withdrawals on the said dates were made by him in the Officer's Scrolls. He has also admitted that the relevant entries of the said dates were dishonestly and fraudulently altered by him in respective supplementary, so that they could tally with the day book. The record further reveals that there is also a confession by the accused/appellant that the amount of total cash balance and the supplementary were altered by him as disclosed by the prosecution. Although the accused/appellant has denied the charges of destroying the vouchers after receiving the payment, but he added that on 20.04.1991, he dishonestly and fraudulently withdrawn Rs. 5000/- from account No. 12799, which belong, to one Narendra Bhola on the basis of the forged vouchers. As soon as the incident of the withdrawal of the amount on the basis of the forged voucher came to the knowledge of Branch Manager, the money was immediately returned to the Cashier by the accused/appellant.

18. The accused/appellant has also confesses that a total sum of Rs. 1,39,000/- from the aforesaid accounts on the basis of forged vouchers made by him and he already delivered

the relevant confessional note to this effect to the Branch Manager of the Bank. An opportunity was provided to the accused/appellant to adduced evidence in defence but the record shows that he declined to avail this opportunity and submitted before the trial court the he does not with to lead evidence in his defence. The charges were although denied by the accused/appellant initially but during the course of the trial the accused/appellant for the reasons best known to him admitted the genuineness of the documents being relied upon by the prosecution against him and also made an admission during the statement recorded under Section 313 Cr.P.C. against all the charges leveled against him.

19. Learned counsel for the appellant (amicus curiae) has argued that in view of the provision of Section 17 of Prevention of Corruption Act, an officer below the rank of Deputy Superintendent of Police or of equivalent rank was not authorized to investigate the matter.

20. It has been submitted that the judgment and order passed by the trial court convicting the accused/appellant is not sustainable in the eye of law on the sole ground that the inspector of the C.B.I. has got no right or authority to investigate the matter and the entire trial on the basis of unauthorized investigation is initiated. For the purpose of deciding the submission advanced by the learned counsel for the appellant, it would be relevant to read the provision of Section 17 of Prevention of Corruption Act, which runs as follows:-

> ***"17. Persons authorized to investigate –*** *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank:-*

a) in the case of the Delhi Special Police Establishment, of an Inspector of Police.

b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank.

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

Provided that if a police officer now below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section 91) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

21. It is clear from the aforesaid first proviso of Section 17 of the Prevention of Corruption Act, that the inspector is also authorized to investigate the matter if he has been authorized by the State Government in this behalf by general or special order:

22. The second proviso of the aforesaid Section makes it clear that the order of the Superintendent of Police to investigate the matter is required and in the instant case Ex.Ka. 14 shows that there is an order of S.P. – C.B.I. directing Rajbir Singh – Inspector to investigate the matter.

23. I, therefore, do not find any force in the arguments advanced by the learned counsel for the appellant on this point.

24. Learned counsel for the appellant has also argued that the sanction accorded to prosecute the accused/appellant in the instant case is also not in accordance with law as laid down by the Hon'ble Apex Court from time to time.

25. I fail to appreciate this arguments as the competence of the sanctioning authority to accord sanction and the validity of the sanction order has not been disputed by the accused/appellant before the trial court at all. The accused/appellant on the other hand has admitted the genuineness of the report submitted by the Office of the Government Examiner of Questioned Document, Central Forensic Institute, Calcutta which is on the record as Ex. Ka. 16.

26. Having considered the entire facts and circumstances of the case, I come to the conclusion that the impugned judgment and order passed by the trial court convicting and sentencing the accused/appellant for the offence under the aforesaid charges do not require any interference.

26. The appeal lacks merit and is liable to be dismissed.

27. The conviction and sentence imposed by the trial court vide impugned judgment and order dated 05.06.2000 is hereby maintained.

(B.C. Kandpal, J.)

20.07.2006
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